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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/230,623 06/14/99 MAY

S P98.3235

EXAMINER

IM52/0403

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WEINSTEIN, S

ART UNIT

PAPER NUMBER

1761  
DATE MAILED:

04/03/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/230623

Applicant(s)

MAY ET AL

Examiner

J. WEINSTEIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

☒ Responsive to communication(s) filed on 12/1/00

☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1-10 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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### DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba ('252) in view of applicant's admission of the prior art as further evidenced by Poppel et al. ('504), further in view of Quaker Oats (G.B. '351), Hillebrand et al (Austral '797), McMahon (GB'351), QP Corp (Jap '174), QP Corp. ('677), Errass (Europ. '046) and Henkel (GB '234) for the reasons fully and clearly detailed in the Office action mailed 8/29/00, page No. 5 further in view of Waldburger ('254), McGonigle ('174), Cease ('537), Bliley ('086), Stover ('245) and Rogers et al ('094)

Claim 1 recites that the base layer comprises solid food pieces in a gravy and the upper layer is a substantially solid foodstuff and that the substantially solid foodstuff is capable of supporting the base layer when the pet food product is inverted. As noted previously applicant's admission of the prior art discloses that applicants are not the inventors of either of the layers. The recited base layer is the admitted state of the art chunk-type product and the recited upper layer is the admitted state of the art meat loaf product. The latter would inherently be "capable" of supporting the former due to the physical properties of the meat loaf product. In fact, as

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noted previously, applicants have admitted that the two different food components have been brought together in a composite form wherein the solid meat loaf product has enclosed the chunk type product so that the former can obviously support the latter. (Note that Poppel ('504) has been substituted for the PCT version of Poppel but they are exact duplicates). Since Ohba discloses vertically stratified pet food layers in a can where it would be evident that due to the gelatinizer, any of the layers will support the other layers when inverted, to modify Ohba and employ equally conventional ~~X~~ layers also known to be brought together in a composite form would have been prima facie obvious in view of the art taken as a whole. As to which layer is above or below the other layer would have been an obvious function of whether one is to spoon out the layers or invert the container and dispense the layers. If one chooses to employ the latter technique, then it would have been obvious to fill in reverse order from that desired when presented, inverted on a plate. Not only is this common sense, it is obvious in view of the art taken as a whole. It is also noted that it seems clear Ohba will invert the container of Figure 2, since the objective is to have the pet eat the layers in a selected order. If the product is spooned out, all layers would be exposed to the animal.

As evidenced by Biley, Waldburger, McGonigle, Cease, and Stover, it is notoriously old in the art to fill containers with discrete layers of different foods in the opposite order in which they are desired to be presented for eating if the product is to be dispensed by inverting the container. These references include various foods including solid foods and gravies where the objective is to invert the container and provide the gravy on top of the solid food. It is noted that

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these references rely on freezing for stratification, but the art taken as a whole clearly discloses gelation for the same result. Although Rogers et al apparently does not invert the container to dispense the food product, Rogers et al nevertheless discloses a stratified product by providing a solid meat) product above gelatinized gravy. Therefore, the art taken as a whole clearly teaches to modify Ohba with the conventional pet food compositions and provide the solid meat loaf type product above the gravy chunk type/gravy component if one wanted the former below the latter upon inverting the container.

All of applicants' remarks have been fully and carefully considered but are thought to have either been addressed above or are <sup>moot</sup> ~~not~~ in view of the new ground of rejection.

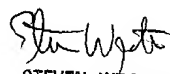
Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Weinstein/dh

March 19, 2001

Corrected

March 28, 2001

  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 1761  
4/3/01